

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICAH BROWN,	§	
Petitioner,	§	
	§	
v.	§	No. 3:19-cv-02301-L-BN
	§	*CAPITAL CASE*
BOBBY LUMPKIN,	§	
Director, Texas Department	§	
of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**RESPONDENT LUMPKIN'S UNOPPOSED MOTION FOR
EXTENSION OF TIME**

This is a federal habeas corpus proceeding brought by Petitioner Micah Brown, pursuant to 28 U.S.C. §§ 2241 & 2254. Brown filed his federal habeas petition on September 11, 2020, which the Director received electronically on that date. Docket Entry (DE) 29. By order of this Court, the Director's answer is due ninety days after receipt of Brown's petition. DE 9 at 2–3. Thus, the Director's answer is due by December 10, 2020. For the following reasons, the Director respectfully requests an extension of ninety (90) days, or until March 10, 2021, to file his answer.

First, the undersigned counsel is the acting attorney pro tem in *State v. Michael Dean Gonzales*, No. D-23,730 (358th Jud. Dist. Ct., Ector County, Tex.). This is a case where all habeas proceedings have concluded, but the parties are preparing for last-minute litigation in anticipation of a requested

execution date for the spring of 2021. For several months up until the beginning of November, the undersigned had to review and redact an extensive prosecution's file and turn that file over to Gonzales's counsel. Essentially, the undersigned worked exclusively on this project from mid-August until November. This project required frequent consultation with other division attorneys regarding what could and could not be turned over. In the upcoming weeks and months, the undersigned is anticipating extensive state and federal court litigation in this case, including a request for DNA testing under Texas Code of Criminal Procedure, Chapter 64, and a subsequent state habeas application alleging that Gonzales is intellectually disabled.

Second, within the next several months, the undersigned has the following additional due dates: a Fifth Circuit response in opposition to an application for a certificate of appealability (COA) in *Garland Harper v. Lumpkin*, No. 20-70022, and a district court answer in *Juan Lizcano v. Lumpkin*, No. 3:16-cv-01008-B-BN (N.D. Tex.).

Third, for the past several weeks, the undersigned has been reviewing the file and record in the instant case and has begun drafting an answer. However, the undersigned has discovered that the record is incomplete, in that the undersigned does not have the state habeas clerk's record that includes Brown's state habeas application, the State's answer, and the trial court's

findings and conclusions. This record is necessary for the undersigned to draft an answer to Brown's petition. The undersigned is in the process of obtaining this record. The undersigned has also just learned that the habeas record alone—apart from the trial record—consists of 14 volumes and is just shy of 6000 pages.

Finally, Brown has sought to modify this Court's scheduling order, and although the magistrate denied this motion, Brown has filed objections to the magistrate's ruling. These objections are currently pending.

For these reasons, the undersigned requests ninety additional days to draft and file a thorough responsive pleading to Brown's petition. This motion is not requested to delay this proceeding. Counsel for Brown, Tim Gumkowski, has advised the undersigned that he is not opposed to the requested extension.

CONCLUSION

The Director moves this Court to extend the time for filing a response to Brown's habeas petition up to and including March 10, 2021.

Respectfully submitted,

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Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

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/s/ Erich Dryden
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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Petitioner, Tim Gumkowski, has been contacted, and he is not opposed to the requested extension.

/s/ Erich Dryden
ERICH DRYDEN
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Unopposed Motion for Extension of Time has been served electronically to Timothy Gumkowski and Maureen Franco on December 7, 2020.

/s/ Erich Dryden
ERICH DRYDEN
Assistant Attorney General